



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 31 2012

MEMORANDUM

SUBJECT: Final Documents for Review of Existing State / EPA NPDES Memoranda of Agreement (MOAs)

FROM: Lisa C. Lund, Director
Office of Compliance *Lisa Lund*

Randolph L. Hill, Acting Director
Office of Wastewater Management *RZH*

TO: State Environmental Commissioners
Regional Enforcement Directors
Regional Water Directors

We are pleased to be able to distribute to you the final package of documents for reviewing National Pollutant Discharge Elimination System (NPDES) Memoranda of Agreement (MOAs) as we launch an effort to review existing MOAs between the Environmental Protection Agency (EPA) and states that govern the NPDES permits and enforcement programs. The package of documents includes a set of review criteria, a checklist and a model NPDES MOA, which was based, in part, on existing MOAs between 12 states and four EPA regions completed over the last ten years.

The EPA distributed draft documents to states on April 16, 2012, as part of the Agency's activities under the October 15, 2009, Clean Water Act Action Plan (CWA Action Plan), and the Interim Guidance to Strengthen Performance in the NPDES Program (June 22, 2010). The EPA discussed the draft documents with states on May 3, 2012, and the EPA received written comments from 18 different states, the Environmental Council of States (ECOS) and the Association of Clean Water Administrators (ACWA). The EPA developed revised versions of the documents, based on the state comments, and discussed them again with the states, ECOS and ACWA on July 26, 2012.

One of the major tenets of the CWA Action Plan is strengthening oversight of state NPDES programs and, more generally, improving the performance of both EPA and state NPDES



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permitting and enforcement efforts.¹ Part of the effort to improve the operation of state NPDES programs is to assess the status of the state programs, including the MOAs. The NPDES MOAs are the principal agreements between the EPA and authorized states in our interaction on both EPA's and the state's behalf for the NPDES program. Some MOAs date from initial state authorization in the mid-1970s and may not be consistent with current requirements, may lack important components that have been added to the program, or, for some reason, have provisions that may restrict EPA or state actions. In order to ensure that the MOAs do not impede effective NPDES programs, the EPA believes it is timely to initiate these reviews and make appropriate revisions where necessary.

The criteria, checklist and model NPDES MOA are tools for regions and states to use in reviewing an existing MOA, deciding whether revisions are needed, and in making appropriate revisions where necessary. We have also developed and are distributing a response to comments document that responds to numerous comments; while we did not respond to each and every comment, we reviewed and considered all comments individually. If an MOA is found to be deficient based on the MOA review criteria, the EPA and the state should revise the MOA as necessary. These documents are not legally binding or enforceable. State programs need to be no less stringent than the applicable federal requirements, but do not need to track the language of the applicable federal regulations exactly. It is important to emphasize that the EPA does not believe that every MOA needs revision, nor does the EPA intend for every MOA to mirror the model.

EPA's goal is to collaborate with individual states to identify and correct those MOAs that prohibit or hinder the effective implementation of the state's and EPA's NPDES program. In our discussion with an individual state, it may be possible to find solutions to address any problems through use of other written binding agreement such as state/EPA agreements, grant workplans, and or a supplemental Attorney General's statement.

The EPA expects that NPDES program MOAs will be reviewed by each state and EPA regional office at least once every four years in accordance with the four year cycle for integrated NPDES Permit Quality Review and State Review Framework enforcement oversight activities developed under the CWA Action Plan. Problematic MOAs identified in this process should be revised expeditiously, and all necessary changes should be made by September 2017.

For any MOA needing revision, the EPA anticipates engaging the state in a process to revise the MOA as necessary. This process will be conducted using the procedures in the NPDES regulations for program modification. We hope the model MOA will prove useful by providing possible language for modifications of existing MOAs, as well as serving as a template for new MOAs, including MOAs with states and Tribes seeking NPDES program authorization in the future.

¹ The effort to undertake a review of existing MOAs is also a component of the Agency's response to recommendations by the EPA Office of Inspector General (OIG) in September 2010 to review NPDES MOAs and update as necessary.

We appreciate all of the constructive comments and suggestions that we received from the states on the draft documents and look forward to working with you as we move forward with the review process. If you have any questions on the NPDES MOA documents, please contact either one of us or have your staff contact Gary Hudiburgh at hudiburgh.gary@epa.gov (202-564-0626), or Chad Carbone at carbone.chad@epa.gov (202-564-2523).

Attachments

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